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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/010,934	11/13/2001	Ann M. Nichols	KCC 4729.1 (16,210.1)	8461
321	7590	06/23/2005	EXAMINER	
SENNIGER POWERS LEAVITT AND ROEDEL ONE METROPOLITAN SQUARE 16TH FLOOR ST LOUIS, MO 63102			FOSTER, JIMMY G	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 06/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/010,934

Applicant(s)

NICHOLS ET AL.

Examiner

Jimmy G. Foster

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2-11,13,15,17-19,21,23 and 25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-11,13,15,17-19,21,23 and 25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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1) Claim 23 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claim calls for both a closed position as leaving a second portion of the first wall (of the pocket) as being uncovered by the flap, but also calls for the adhesive material on the flap to secure the flap anywhere on the exterior area of the pocket. Since there is no support for both happening at the same time, and since it appears to be impossible for both to happen at the same time, claim 23 is considered to have new matter, and, moreover, what is claimed by claim 23 appears to be not enabled by the disclosed invention. One of ordinary skill in the art would be unable to make or use the invention so as to provide a flap closed position which both leaves a second portion of a first wall of the pocket uncovered but permits the adhesive on the flap to secure anywhere on the exterior pocket.

The requirement for securement anywhere on the exterior of the pocket does not make sense because the closed position will provide the flap only on one side of the pocket. It would not be clear to one of ordinary skill how this closed position would permit the flap to secure to the flap side of the pocket.

2) Claims 23 and 25 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. For the reasons stated above, claim 23 is contradictory and therefore confusing.

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In claim 25, line 35, there is no antecedent basis for "the first wall". Moreover, it is not clear what relationship the first wall has with the middle portion or back portion since the wall appears to be, perhaps, a double recitation of one of these portions.

Additionally, in claim 25, line 44, there is no antecedent basis for "said exterior area". Moreover, it is not clear what relationship the area has with the first and second portions.

Additionally, claim 25 appears to be inaccurate as calling for a second fold that separates the flap from the middle portion (lines 25-27) but also calling for the releasable closure to secure the flap to the middle portion in the closed position of the flap. If the flap extends from the middle portion and also secures to the middle portion, then the flap cannot be in the closed position (i.e. closing the opening), as claimed, when this happens.

3) The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4) Claims 2-11, 13, 15, 17, 19, 21 and 25 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Joseph et al (6,015,045) in view of McLaughlin et al (4,997,613) and published Canadian patent document 2,109,782 to Larose et al. The reference of Joseph et al

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discloses a package for feminine care articles (col. 3, lines 5-6 and lines 42-43), including sanitary napkins (which function as panty liners, regarding Applicant's claim 17). The package includes a pocket (Fig. 1) made of flexible material (col. 3, line 65 through col. 4, line 4), having a hollow interior (again Fig. 1) which contains the articles.

The package includes an opening at aperture 14. The opening is sized and shaped for permitting removal of each contained article (see col. 6, lines 62-63). The package also includes a flap at cover flap 30 for closing the opening 14 (see Fig. 1 with description of col. 7, lines 41-49). Since the closed flap will cover the opening 14, this will inherently prevent removal of contents through the opening.

The pocket includes a back portion which is the portion of the pocket opposite to the wall 12 (which may also be considered a part of the pocket). Another portion that in part forms the pocket is the retaining band 44, which may be considered to define the middle portion of the pocket since it will be located between said back portion and the flap 30 in the closed package. The pocket further may be considered to include the top horizontal wall of the package. Accordingly, the flap may be said to be attached to the pocket.

Regarding the subject matter of Applicant's claim 21, the middle portion may be considered to be defined by the band 44 of Joseph et al in combination with the wall 12. The exterior surface of the middle portion may be considered to be the exterior surface of the band 44. Regarding the limitation calling for the flap to be free of flush alignment with the pocket, the McLaughlin et al reference

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Inasmuch as Applicant's claim 19 calls for the back portion and the middle portion to at least in part form the pocket, Applicant's claimed back and middle portions do not distinguish over the subject matter of Joseph et al.

A reclosable/refastenable adhesive closure 50 is provided on the flap for releasably fastening the flap in the closed position (col. 7, lines 50-52 and lines 55-58) over the exterior of the retaining band/middle portion 44. The adhesive may be applied/positioned on the flap 30 or the retaining band 44 (col. 8, lines 7-8). The adhesive extends the entire width of the flap, as indicated in Figure 7. Moreover, the adhesive is inherently spaced from the distal edge of the flap since the flap includes a finger tab 34 which forms a distal edge of the flap (see Fig. 1) and since the tab does not receive the refastenable adhesive (see Fig. 7).

Regarding Applicant's limitation calling for the pocket to be of single piece construction, and this it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893); See also *In re Heinrich*, 268 F.2d 753, 756, 122 USPQ 388, 390 (CCPA 1959). Moreover, the reference of *McLaughlin et al*, which Joseph et al incorporates by reference (see col. 5, lines 58-64), suggests that the middle portion and back portion of Joseph et al may be made from a single sheet 24,26 which also includes the flap (see col. 5, line 55 through col. 6, line 4), which would apparently allow a simpler manipulation of the single piece, as opposed to multiple pieces, in the manufacture of the package. Accordingly for these reasons, it would have been obvious in view of

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McLaughlin et al to have made the pocket of Joseph et al from one piece, including the middle portion/retaining band 44.

Regarding Applicant's limitation calling for the flap to be releasably securable by the adhesive to anywhere on the exterior area of the middle portion, this is not considered to distinguish over the subject matter of Joseph et al since any portion of the exterior surface area of the middle portion/retaining band 44 is inherently capable of being secured by the adhesive 50 which is on the flap. This is especially the case because the package of Joseph et al is amorphous/flexible and may be flexed to permit this, and therefore the flap 30 which includes the adhesive 50 may therefore be extended over any part of the retaining band/middle portion 44 so that the adhesive 50 will contact that part.

Although it is not explicitly evident from the Joseph et al patent that the package/pocket will be substantially filled with the feminine articles so as to conform to a stack of the articles, the reference of Larose et al, at Figure 1, at the superior/upper pocket 30 thereof, and at the feminine care articles in the pocket, shows a pocket that is filled in a manner so that it will conform to a stack of articles therein. It is apparent that filling a pocket would function to efficiently use the volume of the pocket, as evident in Figure 1 of Larose et al. Accordingly, it would have been obvious in view of Larose et al to have filled the pocket of Joseph et al with a stack of the feminine articles for the purpose of efficiently using the volume of the pocket for storage of the articles.

The reference of Larose et al also apparently suggests that packaged feminine care articles may be individually wrapped, see Figure

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1 (also see the second text page of the specification, under the heading "BUT DE L'INVENTION). Furthermore, beyond the patent of Larose, official notice is taken that it is very well known to individually package feminine care products in an outer package for known advantages, such as for individual protection of the articles and for providing a wrapper that may be used to wrap each product after the product is used, for disposal. For these reasons, it would have further been obvious, in view of Larose or in view of it being well known, to have individually wrapped the feminine articles of Joseph et al that are stored in the package.

Regarding claims 2 and 3, which call for a particular dimension for the distance that the (adhesive) closure is positioned from the distal edge of the closure flap, Applicant has not shown these dimensions to be critical as to any particular function. Moreover, it is not readily evident to the examiner that the distances claimed function differently from any other distance, including the distance shown by Joseph et al. The reference of Joseph et al (as indicated above) already discloses an adhesive closure (50) which is spaced from the edge of the flap. Accordingly, this general condition is already in the prior art. It is within the ordinary skill in the art merely to discover a workable range for a general condition already in the prior art. See *In re Aller*, 105 USPQ 233. Accordingly, it would have been obvious to have spaced the adhesive closure 50 on the flap 30 of Joseph et al from the flap distal edge by any workable amount, including that claimed by Applicant, and to have correspondingly sized the width of the middle portion/retaining band 44 so that it will still be contacted by the closure 50.



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Regarding limitations of Applicant's claims 4 and 9, the package of Joseph et al may be shaped as disclosed by the patent to McLaughlin et al (4,997,613, incorporated by reference in the Joseph et al patent). See the column 5, lines 58-61. The flap of that incorporated reference is substantially rectangular. Accordingly, it would have been obvious in view of this to have made the package of Joseph and the flap thereof with the shape of McLaughlin et al, including wherein the flap is rectangular. Moreover, McLaughlin et al, as with Joseph et al, suggests that the adhesive element (16) on the flap may be oriented parallel with the edge of the flap. It therefore would have been further obvious to have maintained this relationship between the adhesive and the flap edge of Joseph et al when the edge is made straight in the manner of McLaughlin et al. Additionally, the reference of Larose suggests that a fastener spaced from on a flap edge may be spaced from a straight edge of the flap. Accordingly, it would further have been obvious in view of Larose to have maintained the adhesive of Joseph et al at a location which is spaced from the flap edge.

Regarding claims 5-7, to have made the adhesive of Joseph et al, as modified above, with a particular width would have been further obvious as merely discovering a workable range for a general condition that is taught in the art, since Joseph et al teaches an adhesive strip, which would necessarily have a width.

Regarding claim 8, the adhesive 50 of Joseph et al is shown by the reference to be continuous (see Figs. 4 and 7). Regarding claim 10, the adhesive extends the entire width of the flap 30 (Fig. 7).

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Regarding claim 11 which calls for a two-sided tape, the reference of McLaughlin et al at 14,16,54 and column 7, lines 49-55 suggests that the closure may include a double-sided/two sided adhesive tape, for attachment of the closure to a container flap. Accordingly, it would have further been obvious in view of McLaughlin et al to have included a two-sided tape as the adhesive closure of Joseph et al for attachment of the adhesive material to the flap thereof.

Regarding claim 13, the adhesive closure 50 of Joseph et al may be provided on the inner face of the flap. See Figure 7.

Regarding claim 15, the articles of content of Joseph et al may be grouped together (i.e. stacked). See column 1, lines 21-25.

Regarding the limitation of claims 21 and 25, calling for the flap to be free of flush alignment with the pocket, the McLaughlin et al reference (incorporated by Joseph et al as showing packages suitable for use in the Joseph et al invention; see col. 5, line 61-64 of Joseph et al) suggest that a closure flap of a hygiene article dispenser may be made with respect to the pocket of a container so that the flap in the closed position does not become flush with the pocket of the package. This is suitable for the invention of Joseph et al since the package of McLaughlin et al is disclosed as suitable for the invention of Joseph et al. In view of the incorporation by the reference of Joseph et al, it would have been further obvious to have incorporated this feature, regarding the flap construction, into the package of Joseph et al.

Further regarding claim 25, the reference of McLaughlin et al, incorporated by reference, suggests that a package for dispensing articles may be formed from a rectangular sheet and folded top provide

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three equal portions (col. 5, lines 24-26 and 55-65). This permits construction of a reclosable package from a single piece, forgoing any attachment steps. In view of the incorporate by reference of Joseph et al, it would have further been obvious in view of McLaughlin et al to have made the package from a rectangular piece that is folded with first and second folds.

Further regarding claim 25, the limitation calling for the reclosable adhesive to releasably secure the flap in the closed position anywhere on "said exterior area" of the middle portion, this does not distinguish over Joseph et al, as modified. Claim 25 does not indicate where this exterior area is on the middle portion. Inasmuch as an exterior area, as claimed, can be a portion of all exterior areas, the area of the band 44 of Joseph et al that is secured by the adhesive 50 may be considered to read upon Applicant's claimed exterior area.

5) Claim 12 is rejected under 35 U.S.C. 103 as being unpatentable over Joseph et al (6,015,045) in view of McLaughlin et al (4,997,613) and published Canadian patent document 2,109,782 to Larose et al as applied to claim 19 above, and further in view of official notice that refastenable hot melt adhesive and its properties are well known. Resealable hot melt adhesives and their properties are known; Applicant admits to their conventionality (see page 8). Selection of a known material based upon its suitability for the intended use thereof generally will not support patentability. In re Leshin, 125 USPQ 416. Accordingly, selection of a particular known material, such as hot melt

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adhesive, as the adhesive 50 of Joseph et al for the suitability thereof would have further been obvious.

6) Claims 17 and 18 are rejected under 35 U.S.C. 103 as being unpatentable over Joseph et al (6,015,045) in view of McLaughlin et al (4,997,613) and published Canadian patent document 2,109,782 to Larose et al as applied to claim 19 above, and further in view of official notice that panty liners and inter-labial pads are known forms of feminine care products having known use. It would have been obvious to have used the package of Joseph et al, as modified above, for storing and carrying any known hygienic/feminine care articles, including the known ones claimed by Applicant (panty liners and inter-labial pads) for providing the same containing and dispensing features for such products that Joseph et al provide for the feminine care articles disclosed.

7) Claims 2-10, 13, 15, 17, 19, 21, and (as best understood) 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones (3,557,853) in view of Larose et al (Canadian 2,109,782), Joseph et al (6,015,045) and Tundermann (3,735,918). In the reference of Jones there is provided a package at holder 10, including a flexible pocket 12a,12b,14,16,18, a Cop opening into the interior 20 of the pocket, a rectangular flap 22 for reclosably closing the opening, and a reclosable, re-openable fastener/closure 24,25 which extends parallel to said edge. The opening of the flap allows insertion and removal of

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the contents of the pocket. Closing of the flap prevents insertion and removal of the contents of the pocket.

The contents are feminine care articles, such as sanitary napkins. The holder may hold more than one article (col. 1, lines 19-21). The contents are shown filling the pocket.

The distal edge of the flap is straight and the fastener strip is parallel to the distal edge.

Regarding Applicant's limitation calling for a back portion and a middle portion, which in part form the pocket such that the flap is securable by the adhesive to substantially anywhere on the middle portion, the area of the panel portions 12a, 12b of Jones which is underneath the closure fastener 25 may be considered to constitute a middle portion insofar as claimed. Although the reference of Jones discloses that the flap fastener constitutes complementary interengageable strips sold under the trade name "Velcro," the reference of Joseph et al, at column 7, line 55 through column 8, line 6, suggests that interengageable fasteners (i.e. hook-and-loop material fasteners) and refastenable adhesive (e.g. pressure sensitive adhesive) are equivalents in the art for performing the function of reclosably fastening a flap closed on a flexible pocket for sanitary articles. These equivalent fasteners use similar actions to be fastened and unfastened. For unfastening them, one would use a separating force. For fastening them, one would use a pressing force. The taught adhesive (50) is shown in Figure 7, and does not include complementary portions. Additionally, regarding Applicant's limitation (claims 23) calling for the flap to be not in alignment with the uncovered second portion of a first wall of the pocket and regarding

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the limitation (claims 19 and 21) calling for the flap to be releasably securable by the adhesive to anywhere on the exterior area of the middle portion, the reference of Tundermann suggests 1) that the reclosable adhesive on the flap of a bag which may be secured to a middle portion (22) of pocket in a manner wherein the uncovered portion is not in alignment with the flap, and 2) that such a feature will permit the securement of the flap at unlimitedly various sealing positions (col. 1, lines 29-32). Accordingly, it would have been obvious, in view of these teachings to have substituted a reclosable adhesive material for the hook-and-loop fastener assembly 24,25 of Jones.

Additionally, it is notoriously well known as an every day use of flexible packaging, in which a portion of the contents are removed and a portion of the contents remain in the package, for the user to close the package tighter on the remaining contents. To have done this with the package of Jones (as modified) when one of the two sanitary napkins has been removed from the package would have further been obvious.

Additionally, the reference of Joseph et al at 50 suggests making an adhesive fastener over substantially the entire width of a closure flap (30). This apparently provides for a full sealing of the opening of the package. Accordingly, it would have further been obvious in view of Joseph et al to have made the adhesive fastener as applied to Jones with a length cover in the entire width of the flap for sealing the entire opening.

Although the reference of Jones does not disclose individually wrapped sanitary napkins/feminine care articles, the reference of Larose et al suggests that packaged feminine care articles may be

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individually wrapped and provided in a stack, see Figure 1 and also see the second text page of the specification under the heading "BUT DE L'INVENTION." Furthermore, beyond the patent of Larose, official notice is taken that it is very well known to individually package feminine care products in an outer package for the known advantages, such as individual protection of the articles, and providing a wrapper that may be used to wrap the product after it is used, for disposal. For these reasons, it would have further been obvious, in view of Larose or in view of it being well known, to have individually wrapped the feminine articles/sanitary napkins of Jones that are stored in the package.

Also the reference of Larose et al, at Figure 1, at the superior/upper pocket 30 thereof, and at the feminine care articles in the pocket, suggests that the pocket of an feminine care article holder may be filled with a stack of the articles in a manner such that the pocket will conform to a stack of articles therein. It is apparent that filling the pocket would function to efficiently use the volume of the pocket, as evident in Figure 1. Accordingly, it would have further been obvious in view of Larose et al to have filled the pocket of Jones et al with a stack of the individually packaged feminine articles for the purpose of efficiently using the volume of the pocket for storage of the articles.

Regarding claims 2, 3 and 5-7, to have spaced the adhesive from the distal edge by a particular distance or to have provided the strip of adhesive with a particular width would have been further obvious as discovering a workable range when the general condition is taught in the art (by Joseph et al). See In re Aller, 105 USPQ 233.

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8) Claims 11 is rejected under 35 U.S.C. 103 (a) as being unpatentable over Jones (3,557,853) in view of Larose et al (Canadian 2,109,782), Joseph et al (6,015,045) and Tundermann (3,735,918) as applied to claim 19 above, and further in view of McLaughlin et al (4,979,613). Regarding claim 11 which calls for a two-sided tape, the reference of McLaughlin et al at 14,16,54 and column 7, lines 49-55 suggests that the closure may include a double-sided/two sided adhesive tape, for attachment of the closure to a container flap. Accordingly, it would have further been obvious in view of McLaughlin et al to have included a two-sided tape as the adhesive closure of Jones (as modified above) for attachment of the adhesive material to the flap thereof.

9) Claims 12 is rejected under 35 U.S.C. 103 (a) as being unpatentable over Jones (3,557,853) in view of Larose et al (Canadian 2,109,782), Joseph et al (6,015,045) and Tundermann (3,735,918) as applied to claim 19 above, and further in view of official notice that refastenable hot melt adhesive and its properties are well known. Resealable hot melt adhesives and their properties are known; Applicant admits their conventionality (see page 8). Selection of a known material based upon its suitability for the intended use thereof generally will not support patentability. In re Leshin, 125 USPQ 416. Accordingly, selection of a particular known material, such as hot melt adhesive, as the adhesive of Jones (as modified above) for the suitability thereof would have further been obvious.



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10) Claims 17 and 18 are rejected under 35 U.S.C. 103 as being unpatentable over Jones (3,557,853) in view of Larose et al (Canadian 2,109,782), Joseph et al (6,015,045) and Tundermann (3,735,918) and further in view of as applied to claim 19 above, and further in view of official notice that panty liners and inter-labial pads are known forms of feminine care products having known use. It would have been obvious to have used the package of Jones, as modified above, for storing and carrying any known hygienic/feminine care articles, including the known ones claimed by Applicant (panty liners and inter-labial pads) for providing the same containing and dispensing features for such products that Jones provide for the feminine care articles disclosed.

11) Applicant's arguments filed 08 April 2005 have been fully considered but they are not deemed to be persuasive. Inasmuch as McLaughlin et al teaches single piece construction, Applicant's claimed subject matter in claims 19, 21, 23 and 25 does not patentably distinguish over the combination of teachings of the references applied to those claims and its dependent claims.

Inasmuch as the exterior area claimed in Applicant's claim 19 is claimed broad enough to be on any part of the middle portion, the limitation of securement anywhere on the exterior area does not distinguish over the combination of the teaching of the references applied to the claim.

Applicant's argument that one of ordinary skill in the art would not have been motivated to eliminate the retaining band is not persuasive, since the incorporation by reference of Joseph et al of the subject matter of McLaughlin et al, which teaches single piece construction, provides ample

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motivation. Accordingly, the further citation supporting making of a single piece that which was made from two pieces, is appropriate.

Applicant's argument that the incorporation by reference of McLaughlin et al by Joseph et al is with respect to shape only, is unpersuasive. The description of Joseph et al at column 5, lines 61-64 states that the disclosure of the McLaughlin et al patent incorporated for the purpose of showing how to make dispensing packages suitable for use with the invention.

Applicant's argument that Joseph et al teach away from a single piece construction is unpersuasive. Joseph et al teach both two-piece and single piece constructions. The description details mainly describe the two-piece construction, but the incorporation by reference of McLaughlin et al, as explained above, also teaches a single piece construction. Therefore Applicant's argument that the entire package of McLaughlin et al may not be incorporated into the two piece construction without doing "express violence to the teachings of Joseph et al, is also not persuasive.

Applicant has argued that Tundermann fails to teach securement of adhesive anywhere on a front panel. But inasmuch as Applicant does not claim securement anywhere on the front/middle panel, this argument is unsupported, disingenuous, and therefore unpersuasive. What Applicant actually claims is securement anywhere on an exterior area of the middle portion. A middle portion is a portion. An exterior area may be any part of that portion. Applicant's limitation, being so broad, clearly does not distinguish over the combinations of applied teachings, including the combination that includes Jones and Tundermann.

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Claim 23 is confusing. However, Applicant's limitation regarding securement anywhere on the exterior area of said pocket, appears to support the examiner's interpretation of the breadth of the wording "exterior area", as it is recited in all of the claims, since in order for the limitation in claim 23 not to be impossible, the exterior area must refer to only a part of the pocket.

While Applicant's efforts with respect to claim 25 appear to being going in the right direction in achieving patentable claimed subject matter, the indefiniteness in the claim, along with the broadness regarding the recited adhesive securement on the exterior area, prevent claim 25 from patentably distinguishing over the applied prior art.

12) **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

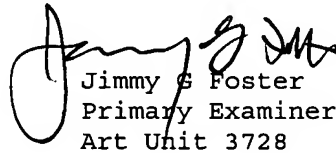
A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

13) Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jimmy G Foster whose telephone number is (571) 272-4554. The examiner can normally be reached on Mon-Fri, 8:45 am - 5:15 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

  
Jimmy S Foster  
Primary Examiner  
Art Unit 3728

JGF  
21 June 2005